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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 1135

SOL ANDREWS, et al.,
Petitioners,
vs.
EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Brief of Certain Respondents in Opposition to Petition for Writ of Certiorari.

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To the Honorable, the Justices of the Supreme Court of the United States:

The Decision Below.

The opinion of the Circuit Court of Appeals (R. 63) is reported at 124 F. (2d) 788.

The Question Presented.

The only question presented is whether or not the Circuit Court of Appeals was correct in holding that there was lacking in each of the fifteen separate civil actions here involved the essential requisite of the jurisdiction

of the District Court, namely, that the "matter in controversy, exclusive of interest and costs, exceeds the sum or value of $3,000." Judicial Code, sec. 24 (1), 28 U. S. C. sec. 41 (1), 27 U. S. C. A. sec. 41 (1).

The answer to this question depends upon whether or not the claims sought to be maintained in each case are of such nature, irrespective of the source thereof (be it a policy of insurance or membership in the company issuing the policy), that they may be aggregated in order to equal the required federal jurisdictional amount.

The Circuit Court of Appeals held that the matter in controversy was not the alleged "fund", consisting of the surplus, contingency reserve or safety fund of each of the fifteen defendants, but was the claim of each plaintiff to compel payment of a part of such "fund" to himself; that none of the cases involved a joint or single claim or common title or right; that each case involved only the separate, distinct demand of each former policyholder arising from his separate insurance contract; that the separate demands of former policyholders could only result in judgments in severalty; that therefore the claims of plaintiffs could not be aggregated and it was essential that the demand of each former policyholder be of the requisite jurisdictional amount; and that since it was admitted the amount of the interest in each alleged "fund" claimed by any policyholder did not equal the amount required by statute, the actions were properly dismissed.

Statement of the Matter Involved.

The petition tends to obscure the question of federal jurisdiction presented on the record by raising numerous questions as to the source of the petitioners' claimed rights, whereas the nature of such rights, and not their source, is the controlling question. (*Thomson* v. *Gaskill* (March 2, 1942) 314 U. S. .....; 62 Sup. Ct. Rep. 673, 675.)

Whether each plaintiff's claim must be based on the language of his policy, as the Circuit Court of Appeals held, or, as contended by the petitioners, arises out of some alleged rights of membership incident to but not expressed in the policy contract, the claim of each former policyholder is in nature his separate, distinct demand and does not depend in any way upon the demands of other former policyholders.

Petitioners also urge several other matters clearly not pertinent to the narrow question passed upon by the Circuit Court of Appeals, such as whether the granting of the relief sought would interfere with the internal management of the companies involved or would adversely affect the rights of present policyholders, or whether plaintiffs' claims were barred by laches or limitations (Petition, p. 14).

Petitioners' claim that "the rights of these millions of former members, whose memberships have terminated, are involved in the case at bar" (Petition, p. 2) not only begs the question decided by the Circuit Court of Appeals, but has no support in the record.

This case involves only the rights claimed by fifteen former policyholders, one in each of the fifteen mutual life insurance companies sued, each of which is a going concern. These suits were dismissed for want of jurisdiction and whatever substantial rights the former policy-

holders have are not prejudiced. The rights of other former policyholders of those companies, whose policies, like those of petitioners, have lapsed or terminated because of nonpayment of premiums or have been voluntarily surrendered and canceled, are not involved except insofar as the adjudication of the question of the jurisdiction of the District Court to entertain those claims creates a precedent on the jurisdictional question.

The Amended Complaints.

The following facts are important and are not covered by petitioners' statement of the case:

1. The amended complaint in each case exhibited a copy of the life insurance policy issued to the named plaintiff by the defendant life insurance company (R. 12, 31).

2. Each of the policies contains a standard provision that the policy and the application attached thereto shall constitute the entire contract between the parties (R. 16; Unprinted Transcript, 76, 96, 113, 118, 134, 144, 158, 167, 174).

3. Each of the policies contains a provision reciting the manner and the extent to which the holder thereof was entitled to participate in the distribution of the divisible surplus of the company through the allowance annually of dividends while the policy was in force, and upon lapse or cancellation, the realization of a cash surrender value or the equivalent amount in extended insurance or a paid-up policy at the election of the insured (R. 13; Tr. 82, 95, 115, 119, 134, 141, 158, 173). It is conceded that each petitioner received everything to which these policy provisions entitled him (Petition, pp. 53-54).*

4. The policy of each plaintiff was lapsed for nonpayment of premiums or was voluntarily surrendered and thereupon terminated and canceled prior to the commencement of the actions in the District Court (R. 31-34).

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* In cases 942 and 980 (New England Mutual Life Ins. Co., and Home Life Ins. Co.—R. 32, 33) the policies of insurance issued to the plaintiff in whose name each of the actions against those companies is brought provides that it is to participate "in the annual distribution of surplus" upon the payment of the second annual premium (New England Mutual Life Ins. Co.—Unprinted transcript, Exh. A., p. 17) or at the end of the second policy year (Home Life Ins. Co.—R. 13). Neither policy was in force more than 7 months and in neither was there paid more than an initial six months' premium (R. 31, 33). Therefore, by the terms of each policy, which recites that it constitutes the entire contract between the parties, the policyholder never became entitled to participate in a distribution of surplus.

5. It is alleged in each case that the "membership" of each former policyholder was evidenced by his policy contract, that such "membership" continued during the time his policy was in force and that it was terminated by the lapse or surrender of his policy (R. 5, 6).

6. It is alleged in each amended complaint that "the rights of plaintiff and all other former members whom plaintiff represents *are separable* with respect to the participation of each of the former members as between themselves" (R. 10, 31). The second prayer of the complaint asks that all other former policyholders be enjoined from commencing any action "against the defendant for the purpose of recovering *their respective interests* as above set forth" (R. 10, 31).

Reasons Assigned for Granting the Writ.

The petition (p. 11) advances three reasons why a writ of certiorari should be granted.

The first reason assigned is:

> "The Circuit Court of Appeals has decided a question of law which has not been decided hitherto on the issues presented, and which this Court should decide."

The principles governing the aggregation of claims for the purpose of making up the jurisdictional amount necessary to give a federal district court jurisdiction on account of diversity of citizenship, present no new or novel question. They have been the subject of opinions of this Court over a period of more than 100 years. They have been reviewed by this Court in several recent opinions (*Gibbs* v. *Buck*, 307 U. S. 66; *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583) and as recently as March 2, 1942, in the opinion in the case of *Thomson* v. *Gaskill*, 314 U. S. .....; 62 Sup. Ct. Rep. 673.

The proposition that the rights of policyholders in going mutual insurance companies are contractual in nature and that, when the policy provides that it constitutes the entire contract between the parties and contains provisions with respect to the right of the holder to participate in the surplus of the company, a policyholder has no claim to surplus except in accordance with the express terms of such policy, is likewise neither new or novel. See cases cited by Circuit Court of Appeals (R. 64-68). This proposition also finds support in the reasoning of this Court in the case of *Pink* v. *A. A. Highway Express, Inc.* (Dec. 8, 1941), 314 U. S. ....., 62 Sup. Ct. Rep. 241, 246.

As appears from the opinion of the Circuit Court of Appeals, the application of these principles to jurisdictional issues substantially identical with those involved in this case was the subject of an opinion of the Circuit Court of Appeals of the Sixth Circuit as long ago as 1917

in the case of *Eberhard* v. *Northwestern Mutual Life Ins. Co.*, 241 Fed. 353. In 1923 this Court cited the *Eberhard* case with apparent approval in its opinion in the leading case of *Lion Bonding and Surety Co.* v. *Karatz*, 262 U. S. 77, 86, which in turn has been approved in many subsequent decisions of this Court, the most recent of which is *Thomson* v. *Gaskill* (March 2, 1942), 314 U. S. ....., 62 Sup. Ct. Rep. 673.

The second reason assigned for grant of certiorari is:

> "The issues involved present matters of such far-reaching consequence to the public at large throughout the United States that this Court should grant the petition for the writ of certiorari."

The question of federal jurisdiction decided by the Circuit Court of Appeals is one of importance, it is true, but it is a question which has been passed upon many times by this Court, and the decision of the Circuit Court of Appeals is in accord with the decisions of this Court.

The third reason assigned is:

> "The Circuit Court of Appeals has decided an important question of local law in a way which is in conflict with applicable local decisions."

It is first to be noted that this reason is in direct conflict with the first reason assigned, which is that the Court "has decided a question of law which has not been decided hitherto on the issues presented."

More significant, however, are the following considerations:

(a) The jurisdiction of Federal District Courts is purely a federal question, and cannot possibly be a question of local law.

(b) None of the defendants is an Illinois corporation. Petitioners do not cite any decisions of the Illinois courts in support of their principle contentions, nor do they claim that the decision of the Circuit Court of Appeals is in conflict with any Illinois decision. The local law involved in

petitioners' contentions is the law of the courts of the domicile of each of the several defendant companies respecting the management of those companies and the relationship between them and their policyholders. As this Court has held, these are matters of particular concern and interest to the courts of the domiciles of the various defendants, and the decisions of those courts are controlling. (*Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123, 130-131; *Hartford Life Ins. Co.* v. *Ibs.*, 237 U. S. 662, 665-670; *Sovereign Camp, W. O. W.* v. *Bolin*, 305 U. S. 66, 75-78.) The highest courts of the states in which six of the companies are domiciled (see R. 31-34) have held that mutual insurance companies are not in the nature of partnerships, and that the rights of policyholders in those companies are not governed by the law of partnerships, as urged by petitioners, but rather by their contracts of insurance, as held by the Court below. (*Cohen* v. *New York Mutual Life Insurance Co.*, 50 N. Y. 610, 10 Amer. Rep. 522; *Grobe* v. *Erie County Mutual Insurance Co.*, 24 Misc. 462, 53 N. Y. S. 628, 630, aff'd 39 App. Div. 183, 57 N. Y. S. 290, aff'd, on the opinion of the Appellate Division, 169 N. Y. 613, 62 N. E. 1096; *People* v. *Security Life Insurance Co.*, 78 N. Y. 114, 124.) In fact, in the case of one of the companies (Mutual Benefit Life Insurance Company) the highest court of the state of its domicile has passed upon the question of the relationship between it and its policyholders and has expressly held that those rights are governed solely by the contract of insurance and not the law of partnerships and that mutual life insurance companies are not in the nature of partnerships. (*Mutual Benefit Life Insurance Co.* v. *Hillyard*, 37 N. J. L. 444, 447, 18 Am. Rep. 741, 753.)

The decision of the Circuit Court of Appeals, so far as it touched upon these questions, was in conformity and not in conflict with the decisions of the courts of the domiciles of the respective respondents.

Conclusion.

The decision of the Circuit Court of Appeals is correct. The question presented is solely one of federal jurisdiction.

None of the reasons stated by petitioners for granting the writ of certiorari is well founded either in law or in fact.

Respectfully submitted,

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Chicago, Illinois, April 30, 1942.